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July 9, 2021

VIA ECF

Hon. Deborah K. Chasanow
United States District Judge
6500 Cherrywood Lane
Suite 400
Greenbelt, MD 20770

Re: Defendants' Response To Plaintiff's Notice Of Supplemental Authority; *Hammons v. Univ. of Md. Med. Sys. Corp.*, Case No. 20-cv-2088.

Dear Judge Chasanow:

On behalf of Defendants University of Maryland Medical System Corporation, UMSJ Health System, LLC, and University of Maryland St. Joseph Medical Center, LLC (collectively, the "Medical System"), we write in response to Plaintiff Jesse Hammons' Notice of Supplemental Authority (ECF No. 50). Hammons asserts recent actions by the United States Supreme Court and the Department of Health and Human Services ("HHS") support his claims and warrant the denial of the Medical System's pending motion to dismiss (ECF No. 39). However, Hammons is plainly mistaken.

Hammons first argues the Supreme Court's denial of defendant's petition for writ of certiorari in *Grimm v. Gloucester Cty. Sch. Bd.* means that case is now "permanent binding precedent." ECF No. 50 at 2; 972 F.3d 586 (4th Cir. 2020), *as amended* (Aug. 28, 2020), *cert. denied*, No. 20-1163, 2021 WL 2637992 (U.S. June 28, 2021). But the Medical System has not disputed *Grimm*'s precedential effect. Rather, the Medical System has distinguished *Grimm* from the instant case because, unlike in *Grimm*, the

limited policy at issue – St. Joseph Medical Center's sterilization prohibition contained in the Ethical and Religious Directives – is facially neutral. *See* ECF No. 48 at 13. As such, in this case, Hammons must allege the Medical System treated him differently as a result of intentional discrimination or discriminatory animus, which he has failed to do. ECF No. 39-1 at 19–20. Thus, the Supreme Court's decision not to review *Grimm* is irrelevant.

Hammons also directs the Court's attention to HHS's recently published interpretation of Section 1557 of the Affordable Care Act, 42 U.S.C. § 18816. *See* Notice of Interpretation and Enforcement of Section 1557 of the Affordable Care Act and Title IX of the Education Amendments of 1972 (May 10, 2021) ("Notice"). But the Notice and HHS's most recent interpretation of Section 1557 do not apply here because they were not in effect at the time Hammons alleges the challenged conduct took place. *Compare* ECF No. 1 ¶¶ 53–56 (alleging Hammons was denied treatment in January 2020), *with* Notice at 1 (noting HHS's interpretation becomes effective May 10, 2021). Hammons cannot apply HHS's new interpretation retroactively to this litigation. *See Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988).

Furthermore, Hammons previously argued that HHS regulations implementing Section 1557 were irrelevant to his claims and the "lawfulness of" the Medical System's alleged conduct "*does not depend on*" on them. ECF No. 47 at 34 n.13 (emphasis added). Hammons cannot argue that the regulations are irrelevant while now arguing that the recent Notice interpreting those regulations is authoritative; of course he cannot have it both ways. *See Angelini v. Baltimore Police Dep't*, 464 F. Supp. 3d 756, 783–86 (D. Md.

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2020). In any event, Hammons' Section 1557 claim fails because he has failed to allege any intentional discrimination by the Medical System. *See Weinreb v. Xerox Bus. Servs., LLC Health & Welfare Plan*, 323 F. Supp. 3d 501, 521 (S.D.N.Y. 2018).

For the reasons set forth above, Hammons' notice of supplemental authority has no impact on his claims or the Medical System's motion to dismiss.

Respectfully submitted,

/s/ Denise Giraudo

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